
(2001) 04 MAD CK 0109

In the Madras High Court

Case No : Writ Petition No. 6442 of 1994 and W.M.P. No. 10000 of 1994

S. Palaniswamy and 2 others

APPELLANT

Vs

The Commissioner Hindu Religious and Charitable
Endowments Departments, Nungambakkam, Madras -
600034 and The Deputy Commissioner, Hindu Religious and
Charitable Endowments, Administration Department, Salem.
And K. Rakki Gounder and K.R. Raju

RESPONDENT

Date of Decision : 12-04-2001

Acts Referred:

Constitution of India, 1950 — Article 261

Citation : (2001) 04 MAD CK 0109

Hon'ble Judges : F.M. Ibrahim Kalifulla, J

Bench : Single Bench

Advocate : M. Vaidyanathan, for the Appellant; S. Gopinathan (R1 and R2) and
Mr. T.L. Rammohan (R3 and R4), for the Respondent

Final Decision : Allowed

Judgement

F.M. Ibrahim Kalifulla, J.—The petitioner is aggrieved against the suo motu order of the first respondent dated 10.9.1992 passed in S.M.R. No. 10 of 1991 in and by which, an order of two decades old was set at naught and the remand was ordered to the second respondent to try the matter afresh. The brief facts are that the petitioners claim to be hereditary trustees of one Sri Mariamman. Sri Sellandiamman Sevapuram, Sri Sellandiamman and Sri Muniappan Temples in Salem District, that their forefathers founded the said temples, that the said temple was an excepted one as defined under the Madras Hindu Religious Endowments Act 1926 (Madras Act II of 1927) which came to be made by the then Board of Commissioners for Hindu Religious Endowments Board, Madras in its order No. 2167 dated 30.8.1937 in O.A. No. 521 of 1936, that subsequently when the Oor Gounders attempted to interfere with the management of the temple by the forefathers of the petitioners, the same was resisted which led to the filing of the suit in O.S. No. 97 of 1940 by the Oor Gounders, that the suit in

O.S. No. 97 of 1940 came to be dismissed by the Civil Court on 19.3.1942, thereby recognising the rights of the petitioner's forefathers to manage the temples in question as Hereditary Trustees, that in spite of the said settled position when further interference were made by the Oor Gounders and other villagers, the forefathers of the petitioner filed O.A. No. 33 of 1972 on the file of the second respondent, who by its order dated 8.11.1972 on a detailed analysis of about 26 documents placed before it, including the Civil Court decree in O.S. No. 97 of 1940, came to the conclusion that the family of the petitioners were in management of the temple and its properties as hereditary trustees were allowed to be in the management and that even the attempts made by the Oor Gounders some 30 years back claiming the trusteeship of the temple was also negated by the Civil Court. Ultimately, the second respondent held that the petitioner's family alone were entitled for the declaration to the effect that they were holding office of trusteeship hereditarily.

2. Thus it could be seen from the above said factors as disclosed by the earlier order dated 30.8.1937 as well as the subsequent order dated 8.11.1972, the Board of Commissioner for Hindu Religious Endowment Board Madras, as well as the second respondent have twice gone into this question about the entitlement of the petitioners to manage the temples in question in their capacity as hereditary trustees and found the said claim to have been established based on acceptable documentary evidence. In spite of such a situation prevailing, the first respondent by the impugned proceedings has interfered with the said settled position after a lapse of nearly 20 years by stating that the previous order of the second respondent dated 8.11.1992 was not supported by material evidence and that there was no indication in the file to show that proper notices were displayed before passing of the said order dated 8.11.1972.

3. Apparently, the first respondent appeared to have acted in a highly arbitrary manner without applying his mind to the records, which culminated in the passing of the order dated 8.11.1972 by the second respondent.

4. In the order dated 8.11.1972, the second respondent has discussed, in detail as to the various materials placed before it, before granting the declaration that the petitioners family are the hereditary trustees. The various exhibits have been listed out to the said order and it further discloses that the forefathers of the petitioner were examined as witnesses before the second respondent. Therefore, there is absolutely, no substance in the conclusion of the first respondent that the earlier order of the second respondent in holding that the petitioners family were hereditary trustees is not supported by acceptable evidence. While reaching the said conclusion, the first respondent has omitted to note the significant factor namely that there was a Civil Court decree as evidenced by Ex.A-10. A perusal of the order of the second respondent dated 8.11.1972 also discloses that the said suit came to be filed by the Oorgounders against the forefathers of the petitioner seeking for a declaration that it was not a hereditary temple and that the said suit was dismissed. It is not the case of the respondents that the said decree was

varied at any point of time. Therefore, when once the Civil Court decree on this very issue has become final by virtue of Article 261 of the Constitution, full faith and credit should be given to the Civil Court proceedings. In such a situation it is not known as to how the first respondent could ignore the binding effect of a Civil Court decree by holding that the basis of the earlier order of the second respondent was unsupported by any documentary evidence. Thus, the conclusion of the first respondent which came to be made after a lapse of 20 years, that too, without any justifiable grounds cannot be sustained. Though, the learned government Pleader made a feeble attempt by raising an objection to the effect that in view of the alternate remedy available, the writ petition should not be entertained, it will have to be stated that the writ petition having been entertained as early as on 8.4.1994 and having kept pending all these years and in view of the patent error committed by the first respondent, the writ petition cannot be thrown out on the simple ground of availability of alternate remedy. Therefore, the order impugned in the writ petition being illegal in every respect, the same is set aside. The writ petition is allowed. No costs.